IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 12 OF 2005
IN
PUBLIC INTEREST LITIGATION NO.43 OF 2005

Amey Co-operative Housing Society Ltd. ...Applicant
Vs.
Public Concern for Governance
Trust and Ors. ...Respondents

Mr.S.H.Doctor with Mrs. Preeti Shah Adv. for Applicant

Mr.C.U.Singh with Ms. Soma Singh & Mr. Mahesh Londhe i/b. M/s. Sanjay Udeshi Adv.for Respondent No.1

Mr. Ravi Kadam, Advocate General with Mr. P.I. Khemani, A.G.P. for Respondent No.2

Mr.G.S.Hegde and Mr. Lokesh Adv. for Respondent No.3

Mr.R.S.Apte Adv. for Respondent No.4

Mr. Janak Dwarkadas with Mr. P.K.Shroff and Mr. Subodh Joshi & Ms. Radhika Pinzara i/b. M/s. Shroff & Co. for Respondent No.5

CORAM: H.L.GOKHALE &
SMT.R.S.DALVI,JJ.
DATED: 3RD AUGUST, 2005

P.C.

1. The Applicant in this Civil Application is a Co-operative Society which is Respondent No.6 to the main Petition. The main Petition has been admitted and an interim order has been passed restraining the Respondents from carrying on further development or construction. This Civil Application was moved earlier before the Honourable Chief Justice and Justice Bobde. By an order passed on 13th June, 2005 they directed that this Civil Application be listed

along with PIL No.43 of 2005 for final hearing on 7th July, 2005. Mr. C.U. Singh appearing for the Petitioners in the main Petition therefore, submitted that this Civil Application was expected to be heard along with the main Petition. Mr.Doctor learned Counsel appearing for the Applicant, however, submitted that the prayer (a)(i) of the Civil Application was made in the interest of justice so that the report of an independent valuer is valuable with respect to the property in dispute, which is leased out by CIDCO to the Applicant and the other Housing Societies.

2. The submission of the Applicant Society is principally that whereas the State Government is relying upon the internal enquiry made by it (which enquiry is now known as enquiry under one Mr. Sankaran, IAS), which according to them came to the conclusion that there is an under valuation and CIDCO has suffered a loss to the extent of Rs.35 crores, the submission of the Applicant and other Societies is that there is no such loss occured and that they rely upon the report of one Mr. Maniyar, Architect, who has certified accordingly.

3. The State Government has filed a reply to this Civil Application. This reply is affirmed by one Mr. Ashok Gharat, Under Secretary to the Government of Maharashtra, Urban Development Department, Mantralaya,

Mumbai on 27th June, 2005. In para 2 of this reply a reference is made to the enquiry by Dr.Sankaran, the then Additional Chief Secretary (Planning). It is stated in this affidavit that according to the Sankaran Committee the prevailing market rate at the relevant time was not less than Rs.21,000/- per sq. mtr. and the Committee was of the view that the loss suffered by CIDCO aggregated to Rs.35.00 crores. In paragraph 3 of this reply it is however, stated that independent valuation is absolutely essential. It is further stated in this para that this is the only way that the real loss caused to and suffered by the CIDCO can be ascertained. In view of this affidavit we asked the learned Advocate General as to whether the Government was accepting the Sankaran Committee's Report and the learned Advocate General stated that the Government does accept the Sankaran's report that CIDCO has suffered losses and Government has issued directions to CIDCO to cancel the allotment. At the same time he maintained what is stated in paragraph 3. However, although this paragraph does say that independent valuation is absolutely necessary, it further states that this is the only way that the real loss caused and suffered by the CIDCO can be ascertained and the steps be taken to recover the same from the concerned parties. In view of this affidavit, according to us it implies that the valuation made by Mr. Sankaran is maintained by the State Government though in para 3 it is agreeable for

an independent valuation, in the event the Court so directs, which is the prayer in the Civil Application.

4. CIDCO has filed an affidavit through one Mr. Vivek Shrikant Marathe, Marketing Manager and in para 8 it is stated that CIDCO is the statutory agency of the State Government and since the State Government has shown readiness to accept valuation through independent valuer, the CIDCO has no objection for the same. In para 5 however, it is stated earlier that State Government has issued directions to CIDCO to cancel certain allotments of plots. The list of such cases includes the allotment to the original Respondents Nos.5 to 10, CIDCO has initiated the process of following Government instructions by issuing show cause notices to various parties. Since we take the Government's affidavit and particularly para 3 thereof as essentially a submission for an independent valuation in the event the Court so directs, we treat the affidavit of CIDCO also as one saying that in the event the Court so directs, CIDCO has no objection to an independent valuation.

5. The Petition is filed by a Public Interest Organisation. The main prayer (a) in the Petition is to cancel the allotments to the concerned Societies. Prayer clause (c) to this Petition is an alternative prayer which says that in the event the construction is completed or has reached an irreversible stage, the

Respondent No.1 State of Maharashtra and Respondent No.2 CIDCO be directed to recover the difference between the market value and the price charged by Respondent No.2. We quite see the merit of the submission of Mr. Doctor which is also adopted by Mr. Dwarkadas appearing for the Developer, that if such independent valuation is received before the disposal of the Petition that could be of assistance when the matter is finally decided. At the same time we must note that this entire exercise is being sought in a Petition which is not filed by these Housing Societies. They are Respondents to the Petition. When the Petition is finally heard appropriate orders could be passed on prayer clause (a). In the event the Respondents succeed there is no occasion to pass any directions in terms of prayer clause (c). We are of the view that when the Petition is finally heard and decided, this decision can be taken on prayer clause (c). The submissions of all the parties will be considered and appropriate orders would be passed at that stage. It is not necessary that it should be decided by way of an interim order in as much as the necessary directions can be given while disposing of the Petition.

6. In the circumstances we pass the following order on the Civil Application:-

. The Relief in terms of prayer clause

(a)(i) of this Civil Application shall be decided when the main Petition is heard while deciding prayer clause (c).

. Since this order is passed on prayer clause (a)(i), there will not be any order on prayer clause (a)(ii).

. Prayer clause (a)(iii) has been considered by earlier Division Bench on 20th April, 2005 and hence cannot be reconsidered.

. Civil Application stands disposed of accordingly.

(H.L.GOKHALE,J.)

(SMT.R.S.DALVI,J.)